Mary Perry and *John Perry*, Executors of Capt. *Benj. Perry*, *deceas'd*, and others, Appellants.

Edward Riley, *Esq*; and others, Reſpondents.

The Reſpondent *Riley*'s CASE.

1683. THE Reſpondent, *Huge Mervin*, having in the Year 1683, Mortgaged ſeveral Lands in *Ireland* to Mr. *Rolls* for a conſiderable Sum of Money, and *Dorothy Rolls* his Executrix having obtained a Decree to forecloſe the ſaid *Mervin*, the Reſpondent, at the ſaid *Mervin*'s deſire, promiſed to pay off Mrs. *Rolls*, and to advance a farther Sum, if his Council approved of the Title.

And the Title appearing to be that Sir *Audley Mervin*, the ſaid *Hughs*'s Father, had paſs'd *two ſeveral Certificates*, *and Letters Patents* of the Mortgaged Eſtate in purſuance of the Act of *Settlement* and *Explanation*, without any *ſaving* to any Perſon whatſoever. And the Reſpondent's Councel adviſing the ſame to be an unqueſtionable *Title*, he did pay off Mrs. *Rolls*, and lent Mr. *Mervin* ſo much as made the Debt 3100 *l.* and thereupon had the Eſtate made over to him, and Mr. *Mervin* had 2 Years time for paying the Money.

That Mr. *Mervin* taking no care to pay either Principle or Intereſt, whereby the Security became ſcant, and the Reſpondent (then diſcovering that he had a Title under his Mortgage to ſome Lands in the poſſeſſion of the Appellants, or ſome of them, of 70 *l. per Ann.* upon his paying 6 Years purchaſe for the ſame) did, in *Anno* 1702, Exhibit his Bill in her Majeſty's Court of Exchequer in *Ireland* againſt Mr. *Mervin*, to
1702. forecloſe him, and againſt the Appellants, for to Aſſign the ſaid Lands to him upon his paying them the ſaid *ſix Years Purchaſe*.

1703. And thereupon in 1703, the Appellants Exhibited their Bill in Chancery in *Ireland* againſt the Reſpodents: Setting forth, that part of the Lands ſo Mortgaged to the Reſpondent *Riley*, were conveyed to the ſaid Sir *Audley Mervin* by ſuch Letters Patents in Truſt for one Captain *Benjamin Perry* (under whom the Appellants Claim) and long Proceedings formerly in Chancery relating thereto, and therefore to have the ſaid Lands aſſigned to them, and to have an Account of the meaſne Profits thereof from 1667, was the end of that Bill.

To which Mr. *Mervin* anſwered, and denied any *Truſt* for Capt. *Perry*, and alſo inſiſted on ſuch other Matters relating thereto.

The Reſpondent *Riley*, in his Anſwer, inſiſted on his being a *Mortgagee* for 3100 *l.* and denied that he had any *Notice* of the Appellant, or the ſaid Capt. *Perry's Pretences* to the ſaid *Retrench'd Lands* before he laid out his Money on the ſame, and had the Mortgaged Eſtate aſſigned to him.

The Cauſe came to be Heard in *November* and *December* 1704, by the Lord Chancellor of *Ireland*, aſſiſted by two of the Chief Juſtices, and the Appellants Councel then offering nothing againſt the Reſpondent, but againſt Mr. *Mervin*, the Court declared that the Appellants had no Right to the *Retrench'd Lands*, and that there was no *Truſt* in Capt. *Perry's* favour.

12 *Decemb.* 1705. But the Appellants afterwards did, by *Petition*, bring on the Cauſe againſt the Reſpondent *Riley*, foreſeeing that they could not properly Appeal (as is ſuppoſed, without bringing him on) and at ſuch Hearing (*the Appellant's Councel not objecting any thing againſt the Reſpondent's Title*) the Court (on the Reſpondents proving his Deeds of Mortgage, the Aſſignement of the Decree of fore-cloſure, and no ſaving in the Certificates and Letters Patents for the ſaid Capt. *Perry*, diſmiſſed the Appellant's Bill, as to the Reſpondent *Riley*, in relation to the Retrench'd Lands.

Which he hopes, ſhall be affirmed, for that he Lent his Money without Notice of any Truſt either expreſt or implied, and under the Sanction of the ſaid Decree of Foreclоſure, which was a Judicial Tranſaction in a Cauſe that was many Years depending in the Chancery, and the Appellants all the while making no Pretence to the Retrench'd Lands; And a Court of Equity does never aſſiſt to defeat any Mortgagee's Title. And for the pretended Notice, the Appellants inſiſt on, is only a Proceedingin in a Cauſe formerly depending in Chancery, which, they ſay, all Men are bound to take Notice of, and on which there has not been any Proceedings for near theſe 30 *Years paſt, againſt which Truſt the Court has alſo Decreed.*

And therefore he hopes the Appeal ſhall be diſmiſſed with Coſts.

Ri. Turner.